

ORIGINAL

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of)
)
Eligibility for the Specialized)
Mobile Radio Services)
and Radio Services in the)
220-222 MHz Land Mobile Band)
and Use of Radio Dispatch)
Communications)

GN Docket No. 94-90

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REPLY COMMENTS OF
POLAR COMMUNICATIONS MUTUAL AID CORPORATION

Polar Communications Mutual Aid Corporation ("Polar"), by its attorneys, hereby submits its Reply Comments herein.

Support Is Widespread For Elimination Of
The Wireline/SMR Eligibility Restrictions

In its initial comments, Polar stated that wireline entry into the Specialized Mobile Radio ("SMR") business represents the best hope for the rapid development of needed SMR services in unserved and underserved rural areas; and that the convergence of increasingly competitive Commercial Mobile Radio Services ("CMRS") and the implementation of Congressionally-mandated regulatory parity among these services have eliminated the Commission's 1974 rationale for restricting wireline eligibility for SMR licenses.

Polar is pleased to note that twenty-four of the twenty-five other commenters who addressed the wireline prohibition supported wireline entry into SMR services.¹ In fact, Nextel Communications,

¹ The following commenters support the elimination of the wireline restriction: American Mobile Telecommunications Association, Inc.; Bell Atlantic Mobile Systems, Inc.; BellSouth Companies; Cellular Telecommunications Industry Association; Century Telephone Enterprises, Inc.; East Otter Tail Telephone Company; GTE Service Corporation; Geotek Communications, Inc.; Industrial Telecommunications Association, Inc. and Council of

Inc. ("Nextel"), the largest SMR operator in the country, has declared:

. . . SMR services and all other wireless services have undergone such a dramatic change that the Commission's initial concerns [regarding the potential for anti-competitive behavior] are no longer significant. Wireline carriers, therefore, should be permitted to own and operate SMR systems.

The passage of the Budget Act and the Commission's Second Report and Order have eliminated the basis for continued wireline prohibition. . . . In light of this evolving competitive atmosphere, there is no compelling public policy basis for wireline eligibility restrictions in the SMR industry.²

Nextel further notes that "the influx of wireline capital into SMR systems could provide economies of scale and needed financial investment in the developing wireless industry" and that "the wireline prohibition is no longer necessary in light of the existing safeguards to prevent anti-competitive behavior by wireline companies."³

SMR WON Comments

The only entity opposing wireline eligibility is SMR WON, a trade association representing certain SMR licensees. SMR WON asserts that: (a) the Commission should preserve the existing dual

Independent Communication Suppliers (jointly); National Association of Business and Educational Radio; Nextel Communications, Inc.; Nynex Companies; Pacific Bell; Personal Communications Industry Association; Rural Independents; Puerto Rico Telephone Company; RAM Mobile Data USA Limited Partnership; Rochester Tel Cellular Holding Corporation; SNET Mobility, Inc.; Southwestern Bell Corporation; Sprint Corporation; Telephone and Data Systems, Inc; United States Telephone Association; and United Telephone Mutual Aid Corp.

² Comments of Nextel at p. 4.

³ Id. at 5.

market structure and separate eligibility standards for SMR and cellular; (b) the wireline eligibility restrictions regarding SMR should only be changed as part of comprehensive legislation addressing the role of local exchange carriers; (c) the lifting of existing wireline entry restrictions, including those on small telephone companies, will result in competitive harm to independent SMR operators; (d) the Commission's interconnection policies and accounting safeguards are not sufficient substitutes for the present eligibility restriction; and (e) the SMR industry is not "sufficiently well established" to permit wireline entry.

Congressionally-Mandated Regulatory Parity Has Superseded Dual Market Structures And Separate Eligibility Standards

SMR WON claims that the dual regulatory structure established by the Commission in the 1970s for 800 MHz mobile services "has proven successful in providing competing services at affordable prices" and has allowed smaller businesses "to afford to construct and operate the SMR systems, and to compete successfully."⁴

SMR WON's argument fails to recognize the critical fact that Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993 amended Section 332 of the Communications Act to eliminate dual regulatory structures and to create regulatory symmetry among similar mobile services. While implementing this mandate, the Commission has found that interconnected SMR systems⁵ should be

⁴ SMR WON Comments, p. 7.

⁵ The Commission has indicated that non-interconnected SMR systems may be classified and regulated under the CMRS rules if they are found, on a case-by-case basis, to be functionally equivalent to CMRS providers. Second Report And Order in

treated as common carrier services, and regulated with cellular, PCS and other specified services under the CMRS classification. 47 C.F.R. § 20.9(a); Second Report And Order in Implementation of Sections 3(n) and 332 of the Communications Act, 9 FCC Rcd 1411, 1451, 1468, 1510 (1994). Moreover, in its recent Third Report And Order in Implementation of Sections 3(n) and 332 of the Communications Act, FCC 94-212, paras. 10-14 and 37-79, released September 23, 1994, the Commission determined that all CMRS services (including SMR, cellular, and PCS) are competing services or have the reasonable potential to become competing services in the CMRS marketplace, and they are therefore "substantially similar" services that should be subject to comparable regulatory requirements. Given that there are no significant restrictions against wireline telephone companies obtaining cellular licenses, 47 C.F.R. §§ 22.901, 22.902, or PCS licenses, Broadband PCS Second Report And Order, 8 FCC Rcd 7700, 7751-52 (1993), regulatory parity requires that there likewise be no restrictions against wireline companies obtaining SMR licenses.

SMR WON also fails to establish any cause-effect relationship or other connection between the Commission's dual regulatory structure and the ability of smaller businesses to afford to construct and operate SMR systems. There is no reason why the capital investment for a trunked SMR system should increase if wireline telephone companies are permitted to enter the industry.

Implementation of Sections 3(n) and 332 of the Communications Act, 9 FCC Rcd 1411, 1447-48 (1994).

In fact, increased demand by wireline entrants and new SMR service users for SMR base station and customer equipment should produce economies of scale for SMR equipment manufacturers that will result in reduced SMR equipment prices. Put simply, smaller businesses can continue to afford to construct and operate SMR systems whether or not wireline carriers enter the industry at this time.

Amended Section 332 Authorizes Elimination Of The Wireline Prohibition Without Further Congressional Action

SMR WON claims that "[w]ireline SMR entry should only be considered as part of comprehensive legislation on access to the LEC monopoly" because of the "danger that LECs can use their local monopoly power and financial strength" to compete unfairly.⁶

The sole rationale for SMR WON's argument is delay. The Commission adopted current Section 90.603(c) under its general rulemaking authority, SMR Allocation Second Report and Order, 46 FCC 2d 752, 787 (1974), rather than pursuant to a specific statutory mandate, and can now eliminate the provision pursuant to the same general rulemaking authority. Moreover, amended Section 332 of the Act gives the Commission full authority to review whether regulations affecting CMRS services such as SMR are in the public interest and whether they enhance competitive market conditions.⁷ Hence, there is no reason for the Commission to postpone consideration of its SMR wireline restriction until Congress passes further telecommunications legislation.

⁶ SMR WON Comments, p. 10.

⁷ 47 U.S.C. § 332(c)(1)(C)

**Elimination of the Wireline Restriction Will
Enhance SMR Service and Competition in Rural Areas**

SMR WON claims that lifting the wireline entry prohibitions, including those on small telephone companies, will result in competitive harm to independent SMR operators.⁸

SMR WON's argument ignores the fact that wireline entry will bring new or additional SMR services to unserved or underserved rural areas,⁹ and not merely replace existing small SMR operators. While metropolitan areas keep waiting lists for their crowded SMR frequencies, rural areas have remained underserved and, in some cases, unserved. Rural telephone companies are the only entities with the proven desire and capability to bring new or competitive SMR services to many sparsely populated or otherwise high-cost areas.

SMR also claims, without any substantiation, that small telephone companies have an unfair, superior "ability to cross-subsidize or finance their mobile operations from affiliate finance companies or third party lending institutions."¹⁰ Few, if any, small telephone companies have their own "finance affiliate." Rather, small telephone companies are small businesses just like small SMR operators, and must generally compete for funds in the capital markets with both large and small businesses. Moreover,

⁸ SMR WON Comments, p. 15.

⁹ See e.g., East Otter Tail Telephone, p.2; Industrial Telecommunications Association, Inc. and Council of Independent Communication Suppliers, p. 4; National Association of Business and Educational Radio, p. 5; and Rural Independents, p. 5.

¹⁰ SMR WON Comments, p. 15.

even without competition from wireline carriers, SMR services have failed to materialize in many rural areas.

**The Commission's Interconnection And Accounting
Safeguards Will Protect Non-Wireline SMR Providers**

SMR WON is the only commenter who claims that the Commission's interconnection policies and accounting safeguards are insufficient substitutes for the wireline eligibility restriction. However, it fails to cite even a single instance where wireline companies have employed interconnection or other measures to disadvantage competing mobile service providers. Rather, SMR WON attempts to support its argument by claiming that SMR operators charge less for service than cellular operators.¹¹

The Commission has substantial experience with the non-discriminatory interconnection services that it has mandated wireline carriers to furnish to cellular and radio common carriers.¹² Its cellular interconnection policies have been implemented by wireline carriers with minimal problems, delays, and complaints. There is, therefore, every reason to believe that the Commission's extension of similar interconnection rights to SMR

¹¹ SMR WON Comments, pp. 16-17.

¹² See, e.g., Cellular Communications Systems, 86 FCC 2d 469, 496 (1981); Cellular Communications Systems (Reconsideration), 89 FCC 2d 58, 80-82 (1982); Policy Statement on Interconnection of Cellular Systems, 59 RR 2d 1283, 1283-84 (1986); Cellular Interconnection Proceeding, 2 FCC Rcd 2910, 2912 (1987); and Cellular Interconnection Proceeding (Reconsideration), 4 FCC Rcd 2369, 2370-71 (1989).

providers and other CMRS licensees¹³ will be implemented in a similar manner.

**The SMR Industry Is
Sufficiently Mature To Permit Wireline Entry**

SMR WON claims that the twenty-year-old SMR industry is not "sufficiently well established" to permit the entry of wireline telephone companies, and that SMR providers will not be able to effectively compete with wireline companies.¹⁴

SMR WON's comparison of the relative size of the cellular and SMR industries is akin to arguing that the newspaper industry is not mature because it generates smaller total revenues than the television industry. Given SMR WON's claims that SMR operators have been able to compete successfully with cellular,¹⁵ no reasonable person should contend that the SMR industry is anything other than "mature" and "established."

Conclusion

For the foregoing reasons, Polar respectfully requests that Commission immediately adopt its proposal to eliminate the wireline prohibition on the provision of SMR services, in order that SMR

¹³ Second Report And Order in Implementation of Sections 3(n) and 332 of the Communications Act, 9 FCC Rcd 1497-98 (1994).

¹⁴ SMR WON Comments, pp. 13-17.

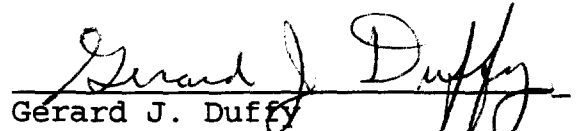
¹⁵ SMR WON Comments, pp. 7, 8, 16, 17.

competition may be enhanced and much-needed SMR service may finally be provided to unserved and underserved rural areas.

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